



Public Law 91-672.
91st Congress, H. R. 15628
January 12, 1971

An Act

To amend the Foreign Military Sales Act, and for other purposes.

84 STAT. 2053

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled. That subsection (b) of section 3 of the Foreign Military Sales Act (22 U.S.C. 2753(b)) is amended to read as follows:

“(b) No sales, credits, or guaranties shall be made or extended under this Act to any country during a period of one year after such country seizes, or takes into custody, or fines an American fishing vessel for engaging in fishing more than twelve miles from the coast of that country. The President may waive the provisions of this subsection when he determines it to be important to the security of the United States or he receives reasonable assurances from the country involved that future violations will not occur, and promptly so reports to the Speaker of the House of Representatives and the Committee on Foreign Relations of the Senate. The provisions of this subsection shall not be applicable in any case governed by an international agreement to which the United States is a party.”

Foreign Military Sales Act, amendments.
82 Stat. 1322.
Sales, credits, etc., restriction.

Waiver; report.

Exception.

Sec. 2. Section 31 of such Act (22 U.S.C. 2771) is amended—

(1) by striking out of subsection (a) “not to exceed \$296,000,000 for the fiscal year 1969” and inserting in lieu thereof “not to exceed \$250,000,000 for each of the fiscal years 1970 and 1971”; and

Foreign military sales credits, ceiling.

(2) by striking out of subsection (b) “during the fiscal year 1969 shall not exceed \$296,000,000” and inserting in lieu thereof “shall not exceed \$340,000,000 for each of the fiscal years 1970 and 1971”.

Sec. 3. Section 33 of such Act (22 U.S.C. 2773) is amended—

(1) by striking out of subsection (a) “the fiscal year 1969” and inserting in lieu thereof “each fiscal year”; and

Foreign military sales, ceiling.

(2) by striking out of subsection (b) “the fiscal year 1969” and inserting in lieu thereof “each fiscal year”.

Sec. 4. The last paragraph of section 1 of such Act (22 U.S.C. 2751) is amended by striking out “denying social progress” and inserting in lieu thereof “denying the growth of fundamental rights or social progress”.

Policy statement.

Sec. 5. It is the sense of Congress that (1) the President should continue to press forward urgently with his efforts to negotiate with the Soviet Union and other powers a limitation on arms shipments to the Middle East, (2) the President should be supported in his position that arms will be made available and credits provided to Israel and other friendly states, to the extent that the President determines such assistance to be needed in order to meet threats to the security and independence of such states, and (3) if the authorization provided in the Foreign Military Sales Act, as amended, should prove to be insufficient to effectuate this stated policy, the President should promptly submit to the Congress requests for an appropriate supplementary authorization and appropriation.

Sales to the Middle East.

Sec. 6. It is the sense of the Congress that—

(1) the President should immediately institute a thorough and comprehensive review of the military aid programs of the United States, particularly with respect to the military assistance and sales operations of the Department of Defense, and

Military aid programs, review.

Conventional
arms trade,
etc.,
Presidential
action.

(2) the President should take such actions as may be appropriate—

(A) to initiate multilateral discussions among the United States, the Union of Soviet Socialist Republics, Great Britain, France, West Germany, Italy and other countries on the control of the worldwide trade in armaments,

(B) to commence a general debate in the United Nations with respect to the control of the conventional arms trade, and

(C) to use the power and prestige of his office to signify the intention of the United States to work actively with all nations to check and control the international sales and distribution of conventional weapons of death and destruction.

International
Fighter
aircraft.
82 Stat. 1320;
22 USC 2751
note.
75 Stat. 424.
22 USC 2151
note.

SEC. 7. Unless the sale, grant, loan, or transfer of any International Fighter aircraft (1) has been authorized by and made in accordance with the Foreign Military Sales Act or the Foreign Assistance Act of 1961, or (2) is a regular commercial transaction (not financed by the United States) between a party other than the United States and a foreign country, no such aircraft may be sold, granted, loaned, or otherwise transferred to any foreign country (or agency thereof) other than South Vietnam. For purposes of this section, "International Fighter aircraft" means the fighter aircraft developed pursuant to the authority contained in the proviso of the second paragraph of section 101 of Public Law 91-121 (relating to military procurement for fiscal year 1970 and other matters).

83 Stat. 204.
Excess defense
articles.

22 USC 2301.

SEC. 8. (a) Subject to the provisions of subsection (b), the value of any excess defense article granted to a foreign country or international organization under part II of the Foreign Assistance Act of 1961 shall be considered to be an expenditure made from funds appropriated under that Act for military assistance. When an order is placed under the military assistance program with the military departments for a defense article whose stock status is excess at the time ordered, a sum equal to the value thereof shall (1) be reserved and transferred to a suspense account, (2) remain in the suspense account until the excess defense article is either delivered to a foreign country or international organization or the order therefor is cancelled, and (3) be transferred from the suspense account to (A) the general fund of the Treasury upon delivery of such article or (B) to the military assistance appropriation for the current fiscal year upon cancellation of the order. Such sum shall be transferred to the military assistance appropriation for the current fiscal year upon delivery of such article if at the time of delivery the stock status of the article is determined, in accordance with sections 644 (g) and (m) of the Foreign Assistance Act of 1961, to be nonexcess.

Transfer
of funds.

22 USC 2403.

(b) The provisions of subsection (a) shall apply during any fiscal year only to the extent that the aggregate value of excess defense articles ordered during that year exceeds \$100,000,000.

"Value."

(c) For purposes of this section, "value" means not less than 33 1/3 per centum of the amount the United States paid at the time the excess defense articles were acquired by the United States.

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(d) The President shall promptly and fully inform the Speaker of the House of Representatives and the Committee on Foreign Relations and the Committee on Appropriations of the Senate of each decision to furnish on a grant basis to any country excess defense articles which are major weapons systems to the extent such major weapons system was not included in the presentation material previously submitted to the Congress. Additionally, the President shall also submit a quarterly report to the Congress listing by country the total value of all deliveries of excess defense articles, disclosing both the aggregate original acquisition cost and the aggregate value at the time of delivery.

Presidential
note to
Congress.

Report to
Congress.

SEC. 9. In considering a request for approval of any transfer of a defense article to another country under section 505 (a) (1) and (a) (4) of the Foreign Assistance Act of 1961, and section 3(a) (2) of the Foreign Military Sales Act, the President shall not give his consent to the transfer unless the United States itself would transfer the defense article under consideration to that country. In addition, the President shall not give his consent under such sections to the transfer of any significant defense articles on the United States Munitions List unless (1) the foreign country requesting consent to transfer agrees to demilitarize such defense articles prior to transfer, or (2) the proposed recipient foreign country provides a commitment in writing to the United States Government that it will not transfer such defense articles, if not demilitarized, to any other foreign country or person without first obtaining the consent of the President.

Transfer
approval.
75 Stat. 436;
81 Stat. 456.
22 USC 2314.
82 Stat. 1322.
22 USC 2753.
Restrictions.

SEC. 10. (a) Notwithstanding any provision of law enacted before the date of enactment of this section, no money appropriated for foreign assistance (including foreign military sales) shall be available for obligation or expenditure—

Foreign assist-
ance appropria-
tions, limita-
tion.

(1) unless the appropriation thereof has been previously authorized by law; or

(2) in excess of an amount previously prescribed by law.

(b) To the extent that legislation enacted after the making of an appropriation for foreign assistance (including foreign military sales) authorizes the obligation or expenditure thereof, the limitation contained in subsection (a) shall have no effect.

(c) The provisions of this section shall not be superseded except by a provision of law enacted after the date of enactment of this section which specifically repeals or modifies the provisions of this section.

Exemption.

SEC. 11. For purposes of sections 8 and 9—

Definitions.

(1) "defense article" and "excess defense articles" have the same meanings as given them in section 644(d) and (g), respectively, of the Foreign Assistance Act of 1961; and

22 USC 2403.

(2) "foreign country" includes any department, agency, or independent establishment of the foreign country.

SEC. 12. The joint resolution entitled "Joint resolution to promote the maintenance of international peace and security in Southeast Asia", approved August 10, 1964 (78 Stat. 384; Public Law 88-408), is terminated effective upon the day that the second session of the Ninety-first Congress is last adjourned.

Termination.

50 USC app.
prec. 1 note.

84 STAT. 2055

Chemical
munitions
transportation,
fund restric-
tion.

"United
States."

Sec. 13. No funds authorized or appropriated pursuant to this or any other law may be used to transport chemical munitions from the Island of Okinawa to the United States. Such funds as are necessary for the detoxification or destruction of the above described chemical munitions are hereby authorized and shall be used for the detoxification or destruction of chemical munitions only outside the United States. For purposes of this section, the term "United States" means the several States and the District of Columbia.

Approved January 12, 1971.

LEGISLATIVE HISTORY:

HOUSE REPORTS: No. 91-869 (Comm. on Foreign Affairs) and No. 91-1805 (Comm. of Conference).

SENATE REPORT No. 91-865 (Comm. on Foreign Relations).

CONGRESSIONAL RECORD, Vol. 116 (1970):

Mar. 24, considered and passed House.

May 13-15, 18-22, 25-28, June 1-5, 8-12, 15-19, 22-26, 29, 30, considered and passed Senate, amended.

June 30, Senate asked for conference.

July 9, House agreed to conference.

Dec. 31, House and Senate agreed to conference report.

Calendar No. 868

91ST CONGRESS 2d Session	}	SENATE	}	REPORT No. 91-865
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AMENDING THE FOREIGN MILITARY SALES ACT

MAY 12, 1970.—Ordered to be printed

Mr. FULBRIGHT, from the Committee on Foreign Relations,
submitted the following

REPORT

[To accompany H.R. 15628]

The Committee on Foreign Relations, to which was referred the bill (H.R. 15628) an act to amend the Foreign Military Sales Act, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

PRINCIPAL PURPOSES OF THE BILL

The principal purposes of H.R. 15628 are to:

- (1) Prevent United States forces from becoming involved in a war in behalf of Cambodia and to insure that United States forces now in Cambodia are withdrawn;
- (2) Authorize credit ceilings and the appropriation of funds for the military sales program, conducted under authority of the Foreign Military Sales Act, for the 1970 and 1971 fiscal years;
- (3) Place restrictions on grants to foreign countries of excess defense articles;
- (4) Require payment by foreign countries, in their own currency, of 50 percent of the fair value of grants of military aid and excess defense articles; and
- (5) Place restrictions on the further transfer by recipients of arms and equipment obtained from the United States under the military aid and sales program.

COMMITTEE ACTION

On July 2, 1969, the Secretary of State submitted a draft of proposed legislation to amend the Foreign Military Sales Act. This was introduced by Senator Fulbright on July 16, 1969, as S. 2640. No

action was taken on the bill during the first session since the regular foreign aid bill, which contained the authorization for the military grant aid program, which is related, did not pass the Congress until December 19 and the appropriation bill not until January 28, 1970. On February 4, 1970, the executive branch submitted draft legislation to authorize a ceiling and appropriations for the military sales program for fiscal year 1971. This bill was introduced by request as S. 3429.

A public hearing was held on S. 2640 and S. 3429 on March 24, the same day that H.R. 15628 was approved by the House of Representatives. At that hearing testimony was received from the Honorable U. Alexis Johnson, Under Secretary of State for Political Affairs, and the Honorable David Packard, Deputy Secretary of Defense. On May 11 the committee held a hearing to receive testimony from executive branch witnesses on proposed amendments to H.R. 15628, including amendments relating to U.S. involvement in Cambodia. The witnesses were Mr. Thomas Pickering, Deputy Director of the Bureau of Politico-Military Affairs of the Department of State, and Lt. Gen. Robert H. Warren, U.S. Air Force, Director of Military Assistance and Sales, Department of Defense.

The committee met in executive session on May 11, and by a vote of 11 to 2 agreed to report the bill to the Senate with several amendments.

BACKGROUND

Credit sales of military equipment to foreign countries are authorized by the Foreign Military Sales Act of 1968, which requires annual authorization by the Congress of both appropriations and a credit ceiling. Most of the countries which purchase arms under the program are less developed. Credit sales of military hardware to the great majority of the developed countries are financed either through the Export-Import Bank or commercial channels. H.R. 15628 would authorize appropriations and credit ceilings on sales for the 1970 and 1971 fiscal years.

Following a series of hearings disclosing a number of abuses in the arms sales program to less developed countries, the Committee on Foreign Relations in 1967 initiated repeal of the broad authority under which the Department of Defense made credit sales of arms to such countries. The revolving fund used to finance those sales was replaced in 1968 with a system, authorized by the Foreign Military Sales Act, which required annual authorization of both a ceiling for Government-financed credit sales and of the appropriations required to finance them. The act also authorized Department of Defense guarantees of commercial bank loans, with a 25-percent set-aside for a reserve fund.

The following tables provide data on the authorizations contained in this bill, historical data, and estimates for all U.S. military export sales:

H.R. 15628 AUTHORIZATION DATA
[In millions of dollars]

Table I

	Fiscal year 1970			Fiscal year 1971	
	Fiscal year 1969	Executive branch request	Committee recommen- dation	Executive branch request	Committee recommen- dation
Credit ceiling.....	296	350	300	385.0	300
Authorization of appropriations.....	296	275	250	272.5	250

Table II

MILITARY EXPORT SALES BY DEVELOPED AND LESS-DEVELOPED COUNTRIES, FISCAL YEARS 1965-71
[In millions of dollars]

Type of orders	Fiscal year—					Estimated, fiscal year—	
	1965	1966	1967	1968	1969	1970	1971
Developed countries ¹	1,406.5	1,836.8	1,319.7	1,060.2	1,448.7	1,506.8	1,434.6
FMS cash.....	1,087.8	1,377.7	766.7	649.4	1,070.7	880.2	952.4
FMS ² credit.....	58.8	167.7	246.4	130.0	104.3	124.0	135.0
DOD direct.....	(10.0)	(23.0)	(33.7)	(37.0)	(75.0)		
DOD guaranty.....	(48.8)	(144.7)	(212.7)	(93.0)	(29.3)		
Commercial.....	259.9	291.4	306.6	280.8	273.7	502.6	347.2
Less-developed countries.....	110.6	227.0	162.1	337.8	579.1	387.1	519.9
FMS ² cash.....	44.3	53.8	50.0	150.5	347.0	110.2	221.0
FMS ² credit.....	51.8	152.3	74.4	133.3	176.9	221.7	230.0
DOD direct.....	(24.1)	(42.9)	(23.9)	(40.2)	(150.9)		
DOD guaranty.....	(27.7)	(109.4)	(50.5)	(93.1)	(26.0)		
Commercial.....	14.5	20.9	37.7	54.0	55.2	55.2	68.9
International organization (FMS ² cash).....	5.5	25.9	45.0	29.9	32.9		
Unallocated (FMS credit).....						4.3	20.0
Worldwide total.....	1,522.6	2,089.7	1,526.8	1,427.9	2,060.7	1,898.2	1,974.5
FMS ² cash.....	1,137.6	1,457.4	861.7	829.8	1,450.6	990.4	1,173.4
FMS ² credit.....	110.6	320.0	320.8	263.3	281.2	350.0	385.0
DOD direct.....	(34.1)	(65.9)	(57.6)	(77.2)	(225.9)	(250.0)	(235.0)
DOD guaranty.....	(76.5)	(254.1)	(263.2)	(186.1)	(55.3)	(100.0)	(150.0)
Commercial.....	274.4	312.3	344.3	334.8	328.9	557.8	416.1

¹ Economically developed countries are those so listed by Executive order for interest equalization tax purposes.
² FMS means sales made under authority of the Foreign Military Sales Act.

Source: Department of Defense.

COMMITTEE COMMENTS

CAMBODIA

The substance of this bill relating to the military sales and grant programs are dwarfed by the significance of the provision relating to the U.S. involvement in Cambodia. The adoption of the Church-Cooper-Aiken-Mansfield amendment, section 7, by the committee, reflects both the members' grave concern over recent developments in Southeast Asia and a conviction that the time has come for the Congress to assert its constitutional powers in order to prevent a widening of the war. Members of the committee have tried persuasion, private and public, in an effort to prevent any U.S. involvement in Cambodia. But to no avail.

On April 2 and April 27, in meetings in executive session with the Secretary of State, members of the committee were virtually unani-

mous in urging that the United States not get involved militarily in Cambodia. The committee was assured by the Secretary that the committee would be consulted to the fullest extent possible concerning the situation.

On April 30, following the disclosure that American military advisers had crossed into Cambodia with South Vietnamese military units, the committee met and issued the following statement:

APRIL 30, 1970.

U.S. SENATE COMMITTEE ON FOREIGN RELATIONS

STATEMENT BY MEMBERS OF THE COMMITTEE ON FOREIGN
RELATIONS

The deepening American involvement in Cambodia is a grave development.

In a meeting with the Secretary of State last Monday, members of the Foreign Relations Committee were virtually unanimous in expressing their deep concern over the possibility of any action by the United States that might involve our Nation further, directly or indirectly, in the changing situation in Cambodia.

American participation in South Vietnamese operations in Cambodia raises important questions concerning U.S. policy in the widening war in Indochina. These questions deeply concern the committee. They are being presented to the executive branch.

The committee has reserved judgment on possible courses of action until it has been more fully informed.

The committee will meet tomorrow, May 1, at 10 a.m. in room S-116, the Capitol.

The committee also sent the following letter to the Secretary of State asking questions concerning a number of issues of concern to members:

APRIL 30, 1970.

HON. WILLIAM P. ROGERS,
Secretary of State,
Washington, D.C.

DEAR MR. SECRETARY: At a meeting of the Foreign Relations Committee this morning, the members agreed unanimously that American participation in South Vietnamese operations in Cambodia raises important questions concerning U.S. policy. These are some of the questions which are of deep concern to the committee:

1. Does the executive branch consider that the SEATO Treaty has any application to the current situation in Cambodia? Is the Tonkin Gulf resolution considered to be applicable?

2. What authority is being relied upon to support the sending of U.S. forces into Cambodia? If it is to protect American forces in Vietnam, where will the line be drawn? It is considered that this authority would permit sending U.S. ground forces to knock out enemy bases in Cambodia? Air strikes in support of South Vietnamese or Cambodian troops? The defense of the Cambodian capital? If the enemy forces reestablish bases in another area of Cambodia, or a third country, does the executive branch believe it has authority to assist the South Vietnamese in attacking those bases?

3. Does the administration plan to consult with the Committee on Foreign Relations concerning the sending of additional advisors or additional U.S. military forces of any kind into Cambodia? Is there any intention to ask the Congress to approve U.S. military involvement in Cambodia or the sending of military aid? Will the administration make public any agreement to provide military aid to Cambodia, directly or indirectly?

4. Is the present operation unique or the beginning of a pattern?

5. Why does the administration consider that eliminating the enemy bases in Cambodia is more important now than before the overthrow of Sihanouk? Was the existence of these bases an element in planning the Vietnamization strategy?

6. Did either the United States or South Vietnam consult with and obtain the Cambodian Government's approval for conducting the current operation? If its approval was obtained, what, if any limits were imposed?

7. What impact has this operation had, or is it likely to have, on the efforts by Indonesia and others to bring about an Asian conference to discuss the Cambodian problem?

The committee has reserved judgment on possible courses of action until it has been more fully informed. Answers to the above questions will be helpful in its consideration of the policy issues involved. The committee would, therefore, appreciate having this information as soon as possible.

Sincerely yours,

J. W. FULBRIGHT, *Chairman.*

A reply has not been received to the Committee's letter.

Subsequent events proved that many of the committee's concerns were well founded. Within a matter of days U.S. forces were deeply involved in several operations in Cambodia.

The committee had hoped to have the benefit of thorough dialogue, by means of the regular hearing process, with responsible officials in the executive branch, prior to acting on proposed amendments to this bill relating to U.S. intervention in Cambodia. However, it was not able to obtain such testimony at the hearing called for that purpose.

Mr. David M. Abshire, Assistant Secretary of State for Congressional Relations, was asked in writing to arrange for executive branch witnesses for a May 11 hearing on the Church-Cooper-Aiken-Mansfield, and other amendments proposed to H.R. 15628. The witnesses who came were not prepared to discuss that amendment, other proposals concerning U.S. policy in Southeast Asia, or developments in that region.

Although the committee did not succeed in obtaining testimony on the subject, it believes that it would be a abdication of its responsibilities to delay action further on the issue, in view of the rapidly moving situation in Southeast Asia. After considerable discussion in committee an amendment proposed by Senators Church, Cooper, Aiken, and Mansfield was adopted by a vote of 9 to 5.

The amendment is simple and straightforward. Its purpose is to prevent U.S. involvement in a wider war in Southeast Asia and to hasten the withdrawal of American forces from Vietnam. In order to do so, it would prohibit use of any appropriated funds for the purpose of:

- (1) Retaining U.S. forces in Cambodia;
- (2) Paying the compensation or allowance of, or otherwise supporting, directly or indirectly, any U.S. personnel in Cambodia who furnish military instruction to Cambodian forces or engage in any combat activity in support of Cambodian forces;
- (3) Entering into or carrying out any contract or agreement to provide military instruction in Cambodia, or to provide persons to engage in any combat activity in support of Cambodian forces; or
- (4) Conducting any combat activity in the air above Cambodia in support of Cambodian forces.

The committee is fully aware that the restrictions recommended do not go as far toward ending U.S. involvement in Southeast Asia as some would choose, and that they go further in restricting the President's authority than others would choose. This provision will not end the war of itself; it seeks only to prevent a wider war. And in accomplishing this it may point the way to peace. Almost 50,000 of America's finest young men have lost their lives, and 276,000 more have been wounded as a result of the Vietnam war. Members of this committee do not want the quagmire of Vietnam to spread into Cambodia. And, in spite of the best intentions of the President and his advisers, forces and events may intervene which are beyond the control of the President, and if past experience is a guide, we run the grave risk of repeating the errors of Vietnam in Cambodia and of finding our Armed Forces fighting on yet another front in a war which seems without end. It is time for the Congress to exert its constitutional authority to assist in bringing this war to an end. This provision is a small, but important, step in that direction.

The following comments were received from the Department of State on a slightly different version of the amendment approved by the Committee:

DEPARTMENT OF STATE.
May 11, 1970.

Hon. J. W. FULBRIGHT,
Chairman, Committee on Foreign Relations,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: I am glad to have the opportunity of expressing the views of the Department of State on the draft Cooper-Church amendment to the Foreign Military Sales Act.

The Department of State believes that the general thrust of the amendment is in consonance with the President's expressed intentions concerning the limited role of U.S. forces in Cambodia. Those forces will complete their operations and return to Vietnam by July 1, probably earlier. The primary mission of the actions in progress is to protect U.S. and allied forces in the Republic of Vietnam and to reassure the Vietnamization program.

As a general principle we do not consider it desirable that actions of the Commander in Chief should be subject to statutory restrictions. In any case, no such amendment should restrict the fundamental powers of the President for protection of the armed forces of the United States. As it stands, however, the amendment might be so interpreted, thus limiting the President's authority to take actions which he finds to be essential for the defense of U.S. forces. Subject to this reservation, we have no objection to subparagraph 1. We

believe, however, that subparagraphs 2 and 3 are subject to a great variety of interpretations which might adversely affect the President's policy on Vietnamization and steady replacement of American combat forces in Vietnam.

Since I do not believe that the framers of the amendment intend to diminish in any way the right of the President to act for the protection of U.S. forces, I urge that the committee consider revising the amendment to make it clear that the President is entitled to take action to protect the lives of American troops remaining with the Republic of Vietnam. We would also like the opportunity to assist in clarifying subparagraphs 2 and 3.

Sincerely,

DAVID M. ABSHIRE,
Assistant Secretary for Congressional Relations.

Military sales

Although many members of the committee continue to view the military credit sales program with considerable skepticism, it has approved continuation of the program for the 1970 and 1971 fiscal years at approximately the same level as that in effect in fiscal year 1969. It should be made clear that this program applies primarily to sales of military arms and equipment to underdeveloped countries, not to the rich nations whose purchases account for about three-fourths of the dollar value of all U.S. military export sales. In the 1970 fiscal year developed nations are expected to buy \$1,448 million out of an estimated total of \$1,898 million in military export sales. Three years ago in recommending repeal of the Department of Defense's broad authority to finance sales of weapons to less developed countries, the committee said in its report to the Senate:

The purpose of the amendment is to get the Department of Defense out of the business of financing sales of sophisticated military hardware, on liberal credit terms, to countries which, in the committee's judgment, do not have defense needs which justify American subsidization or involvement. Current policies have resulted in U.S.-furnished arms appearing in the hands of both sides in all too many regional disputes around the globe, sapping scarce resources which should be used for economic development, and creating an "arms merchant" image for this country which contrasts with our basic objective of promoting world peace. The committee's actions will help force the executive branch to practice what it preaches about preventing arms races and discouraging wasteful military expenditures by poor nations.

Although the credit authority approved by the Congress in the Foreign Military Sales Act in the following year is an improvement over the open-ended revolving fund previously used, it is still questionable if a Government-sponsored sales program, to poor countries, of this magnitude serves the national interest. The committee will give more detailed study to this subject in connection with the review next year of our foreign aid policy.

PROVISIONS OF THE BILL

Section 1—Illegal seizure of American vessels

H.R. 15628 also amends section 3(b) of the act which prohibits the sale of defense articles and services to countries who seize American fishing vessels in international waters.

Section 1 makes the following changes to section 3(b) of the act, in order to perfect the intent and implementation of the restriction:

(i) The words "for engaging in fishing" have been substituted for "engaged in fishing" to make it clear that the restriction is aimed at seizures because of fishing activities.

(ii) A new sentence has been added to make it clear that the restriction does not apply where the seizure is lawful under an international agreement to which the United States is a party.

(iii) In lieu of an indefinite cutoff of sales after an unlawful seizure, the revised language specifies that the period of ineligibility for sales shall be 1 year after each unlawful seizure.

(iv) The words "sales, credits, or guaranties" have been substituted for "sold" to make it clear that an unlawful seizure will make the seizing country ineligible for further contracts of credit or guaranty as well as for further contracts for sale. This change is not intended to require a cutoff of the pipeline of undelivered items or of undisbursed obligated funds.

(v) New language has been added authorizing the President to waive the restriction when he receives reasonable assurances from the country involved that future violations will not occur.

Section 2—Authorization of appropriations and credit ceiling

Subsection (1) amends section 31 of the act and authorizes new obligational authority of \$250 million for each of the 1970 and 1971 fiscal years. This compares with the executive branch request of \$275 million for fiscal year 1970 and \$272.5 million for the 1971 fiscal year. Through use of the guarantee authority, the sums authorized will be more than sufficient to finance the sales program authorized by the ceiling set by subsection (2).

Subsection (2) sets a credit ceiling on foreign military sales of \$300 million in each of the 1970 and 1971 fiscal years. The executive branch had requested a credit ceiling of \$350 million for each year.

Section 3—Restrictions on sales to Latin American and African countries

Section 3 of the reported bill amends section 33 of the act, which relates to regional ceilings on foreign military sales.

Subsection (a) makes the fiscal year 1969 ceiling of \$75 million for Latin American countries a continuing ceiling applicable in each fiscal year. No change is made in the dollar amount of the ceiling.

Subsection (b) makes the fiscal year 1969 ceiling of \$40 million for African countries a continuing ceiling applicable in each fiscal year. No change is made in the dollar amount of the ceiling.

Section 4—Statement of policy

Section 4 of the reported bill amends the last paragraph of section 1 of the Foreign Military Sales Act. Section 1 expresses the sense of the Congress on "the need for international defense cooperation and military export controls." The last paragraph of existing law provides that sales and guaranties made under the act "shall not be approved

when they would have the effect of arming military dictators who are denying social progress to their own people." The amendment broadens this caveat by providing further that no sales or guaranties shall be approved in those cases where it is found that such sales and guaranties would have the effect of "denying the growth of fundamental rights or social progress to their own people."

Section 5—Sales to the Middle East

Section 5 expresses the sense of Congress that the President should negotiate with the Soviet Union and other powers a limitation on arms shipments to the Middle East. This amendment further provides that the President should be supported in his position that arms will be made available and credits provided to Israel and other friendly states to the extent he deems necessary in order for such states to meet threats to their security and independence. If the authorization provided in the Foreign Military Sales Act is insufficient to effectuate this policy, the President should promptly submit to the Congress requests for supplementary authorization and appropriation.

Section 6—Review of military programs

This section expresses the sense of the Congress that the President should institute a comprehensive review of U.S. military aid and sales programs and that he should work with other nations to control the distribution of conventional weapons. The committee has long endeavored to bring about more enlightened policies in our own Government concerning grants and sales of conventional weapons. It is hoped that the review called for under this section will bring about a genuine reexamination of our arms sales and aid policies which will lead to further improvements.

Section 7—Prohibition of assistance to Cambodia

The objective of this section is to avoid the involvement of the United States in a wider war in Indochina and expedite the withdrawal of U.S. forces from Vietnam. It is intended that the provision will insure both that U.S. forces are withdrawn from Cambodia and that our forces do not become involved in a war in behalf of Cambodia. In order to accomplish this the section prohibits use of any funds for certain specific purposes.

(1) It would prohibit use of appropriated funds to retain any U.S. forces in Cambodia. This provision will prevent the indefinite presence in Cambodia of U.S. forces in Vietnam which are now there to engage in actions against Vietcong and North Vietnamese forces and bases. The provision was drafted in keeping with the President's assurances to the Nation that the current operations involving U.S. forces are temporary and that U.S. forces will soon be withdrawn. This provision will say, by law, that the operation is temporary in nature and that U.S. forces shall not be sent again into action in Cambodia. This is also in accordance with the statement made by the President in his May 8 news conference "* * * that if the enemy does come back into those sanctuaries the next time the South Vietnamese will be strong enough and well trained enough to handle it alone."

This language would also prohibit the sending of U.S. personnel into Cambodia as advisers to South Vietnamese military units. If South Vietnamese troops either stay in Cambodia or leave and later return,

as the President has indicated they may do, this provision will effectively prohibit any U.S. participation as advisors in those operations.

(2) Subparagraph (2) is designed to prevent (A) involvement by U.S. personnel, military or civilian, in combat activities in support of Cambodian forces, and (B) any U.S. personnel from providing military instruction to Cambodian military forces.

The President said on April 30 that. " * * * we shall do our best to provide the small arms and other equipment which the Cambodian army of 40,000 needs and can use for its defense." U.S. involvement in Vietnam began with an aid program. The sending of military advisers almost invariably follows, unless the military assistance is confined to the small arms which the President mentioned. Now that the decision has been taken to send weapons to Cambodian forces, unless Congress takes action, the sending of U.S. advisers could very well be the next fatal step into the Cambodian quicksand.

(3) Subparagraph (3) is intended to prohibit any U.S. financed contracts or agreements which provide for persons, other than American personnel, to engage in combat in support of Cambodian forces or to provide military instruction in Cambodia. It would prohibit the United States from doing indirectly what cannot be done directly because of the restriction in subparagraph 2. It would, for example, prevent the United States from paying for the services of mercenaries or others who, without this provision, could be brought in to aid the Cambodian forces.

(4) Finally, subparagraph (4) would prohibit financing with U.S. funds combat activity in the air above Cambodia in support of Cambodian forces.

Section 8—International fighter aircraft

Last year's defense authorization bill contained authority for funds to develop an "International Fighter", an aircraft for which the United States does not have a military need. It was to be developed solely for the purpose of selling or giving it to foreign countries. The proposal, as passed, was limited to authority to provide the aircraft to nations fighting in Vietnam and the project was justified to the Senate on the grounds that the program was necessary for implementing the Vietnamization plan. Under the authorization, however, the plane could be provided to both Thailand and South Korea out of the defense budget.

Section 8 requires that any sale or grant of this aircraft, other than to Vietnam or sales through commercial channels, be made under the regular military grant aid and sales programs.

Section 9—Ceiling on grants of excess defense articles

The Department of Defense has used existing authority in the Foreign Assistance Act of 1961 to give excess defense articles to foreign countries in such a way as to circumvent the expressed intent of Congress in reducing the military assistance program. Section 9 restricts that authority by placing a \$35 million ceiling on the amount of excess defense articles that may be given to foreign countries in any fiscal year.

For all practical purposes, there are, at present, no restrictions on the amount of military assistance which the Department of Defense can provide by way of its excess stocks—since existing law covering

the use of these weapons and materials requires that only the value of reconditioning this equipment be charged against the annual military assistance authorization. Thus, with virtually no restrictions on its authority to use surplus defense articles under the Military Assistance Program, the Department of Defense can and has utilized this authority to maintain the program at a much higher level than Congress has been willing to provide out of new funding.

A particular example of the Department of Defense's disregard for Congress' efforts to cut back on military assistance occurred last year when Congress refused to authorize an additional \$54.5 million to provide the Republic of China with a squadron of F-4 fighter aircraft. Following this refusal, the Department of Defense announced that it was providing the Republic of China with a number of F-100's and F-104's from the Department's excess stocks. In total for fiscal year 1970, Department of Defense pledged to Taiwan \$144,000,000 worth of excess defense items—an amount which may be compared to the \$341,000 given in the fiscal year 1970 congressional presentation book on the military assistance program as the total amount of excess defense articles that the Republic of China was scheduled to receive for that year.

This example illustrates that so long as the Defense Department has unrestricted use of the excess stockpile—which can be expected to rise sharply as a result of Vietnam—the Congress cannot exercise effective control over the amount of military assistance available to the Department to give to foreign countries.

Section 9 establishes an annual ceiling of \$35 million for excess defense articles. For each fiscal year, any amount given away above the \$35 million ceiling would be subtracted from the funds available for grant military assistance, and deposited in the Treasury as miscellaneous receipts.

For valuation purposes the provision provides that excess defense articles be valued at not less than 50 percent of acquisition cost; the Department of Defense now values excess articles at an average of 30 percent of original cost.

Section 10—Payments in local currency for military grant aid and surplus military equipment

Section 10 requires that a foreign country which receives military grant aid or excess defense articles to pay, in its own currency 50 percent of the amount of the grant aid or an amount equal to 50 percent of the fair value of the excess material it is given. The foreign currency obtained in payment would be available to meet U.S. obligations in the country and for financing educational and cultural exchange programs. No formal appropriation of the currencies generated in this manner would be required.

In none of the countries which are major recipients of military grant aid, Korea, Taiwan, Greece, and Turkey, does the United States own an excess of the local currency. In fact, of the top 10 recipients of military aid programed for fiscal year 1971, only one—Tunisia—is an excess currency country.

There is no valid reason why recipients of military aid should not be required to pay at least one-half the value of the materials we give them. Having additional foreign currencies available would lessen the drain on our dollar resources and ease the balance-of-payments problem.

Finally, the requirement of 50 percent payment in value would serve as a brake on the appetites of foreign military leaders, who, under the present system, are encouraged to ask for all the weapons they can get since they cost them nothing. It will insure that requests by foreign countries for military aid must be treated as any other claim on the country's budget resources. If military aid must be weighed in balance with other national priorities, foreign governments may be more reluctant to approve their military leaders' requests for U.S. aid.

Section 11.—Military equipment transfers

The intent of section 11 is (1) to prevent U.S.-supplied military equipment from being transferred to a third country when the United States would not provide the equipment directly and (2) to give the President explicit control over subsequent transfers of military equipment of U.S. origin.

There have been a number news report that Turkey plans to send tanks, originally supplied under the U.S. military assistance program, to Pakistan and that the United States, in turn, plans to provide Turkey with more modern tanks.

In order for Turkey to transfer U.S.-supplied tanks to Pakistan, section 505(4) of the Foreign Assistance Act of 1961 provides that the President must approve such transfer. The possibility of the President's approving the Turkey-Pakistan transfer was raised in committee hearings with Secretary of Defense Laird last year and more recently with Under Secretary of State for Political Affairs, U. Alexis Johnson, and Deputy Secretary of Defense, David Packard. They testified that the administration has not reached a final decision on the case and that it is still under review.

It will be recalled that when hostilities broke out between India and Pakistan in 1965, the United States cut off military assistance to both countries. The same policy has been followed in regard to Honduras and El Salvador, following the outbreak of hostilities between these two countries in 1969.

If this proposed transfer of tanks to Pakistan were approved by the United States, there is sure to be pressure from other countries for the same kind of treatment: India would probably expect to be supplied in the same indirect fashion; Honduras and El Salvador would expect to be supplied through the "back door," and the efforts of these countries would certainly not be lost on others.

In order to prevent such developments, section 11(a) prohibits any country from transferring military equipment, supplied under the military assistance program, to third countries when the United States would not supply such assistance directly to the transfer-receiving country. Thus, the effect of the provision simply reinforces U.S. policy with respect to not providing military equipment where, for any number of possible policy reasons, we do not supply arms directly.

Subsection (b) gives the President explicit control over any succession of transfers of military equipment supplied under Government-financed programs. Cases have arisen in which such equipment has been transferred from the receiving country to a private corporation which, in turn, has transferred the equipment to another government. As the law now stands, the President does not have explicit control over this kind of transfer.

This subsection provides for such control by giving the President the power to approve or disapprove each successive transfer of military equipment.

Section 12—Requiring appropriations to be consistent with authorizing legislation

Section 12 is a product of the debate in the Senate last year concerning an attempt to appropriate \$54,500,000 above the authorization for military aid to provide F-4 fighter aircraft to the Republic of China.

There was general agreement at that time, even by members of the Appropriations Committee, that, although technically legal, the appropriation of sums above the amount authorized was bad procedure, and if carried to extremes could seriously undermine the authority of all legislative committees. The Senate by a vote of 62 to 28 adopted an amendment to the foreign aid appropriation bill which stated that no funds could be expended above the amounts authorized. In conference the amendment was rejected and the appropriation item for the jets for Taiwan was reinstated. The Senate rejected the conference report and, by a vote of 48 to 22, instructed its conferees to insist that no appropriations exceed the authorization. The appropriations in the second conference report conformed to the authorization bill.

This section would simply state, as a matter of law, that any appropriation above the amount authorized cannot be used and that any appropriation for which there is not an authorization cannot be expended. It is patterned after language suggested by the General Accounting Office.

Section 13—Definitions

Section 13 defines the terms "defense article," "excess defense articles," and "foreign country."

Changes in Existing Law

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

THE FOREIGN MILITARY SALES ACT

* * * * *

**Chapter 1.—FOREIGN AND NATIONAL SECURITY
POLICY OBJECTIVES AND RESTRAINTS**

**SECTION 1. THE NEED FOR INTERNATIONAL DEFENSE COOPERATION
AND MILITARY EXPORT CONTROLS.— * * ***

* * * * *

It is further the sense of Congress that sales and guaranties under sections 21, 22, 23, and 24, shall not be approved where they would have the effect of arming military dictators who are [denying social progress] *denying the growth of fundamental rights or social progress* to

their own people: *Provided*, That the President may waive this limitation when he determines it would be important to the security of the United States, and promptly so reports to the Speaker of the House of Representatives and the Committee on Foreign Relations in the Senate.

* * * * *

SEC. 3. ELIGIBILITY.—(a) * * *

[(b) No defense article or defense service shall be sold by the United States Government under this Act to any country which, after the date of enactment of this Act, seizes or takes into custody or fines an American fishing vessel engaged in fishing more than twelve miles from the coast of that country. The President may waive the provisions of this subsection when he determines it to be important to the security of the United States, and promptly so reports to the Speaker of the House of Representatives and the Committee on Foreign Relations of the Senate.]

* * * * *

(b) *No sales, credits, or guaranties shall be made or extended under this Act to any country during a period of one year after such country seizes, or takes into custody, or fines an American fishing vessel for engaging in fishing more than twelve miles from the coast of that country. The President may waive the provisions of this subsection when he determines it to be important to the security of the United States or he receives reasonable assurances from the country involved that future violations will not occur, and promptly so reports to the Speaker of the House of Representatives and the Committee on Foreign Relations of the Senate. The provisions of this subsection shall not be applicable in any case governed by an international agreement to which the United States is a party.*

* * * * *

Chapter 3.—MILITARY EXPORT CONTROLS

SEC. 31. AUTHORIZATION AND AGGREGATE CEILING ON FOREIGN MILITARY SALES CREDITS.—(a) There is hereby authorized to be appropriated to the President to carry out this Act not to exceed ~~[\$296,000,000 for the fiscal year 1969]~~ *\$250,000,000 for each of the fiscal years 1970 and 1971.* Unobligated balances of funds made available pursuant to this section are hereby authorized to be continued available by appropriations legislation to carry out this Act.

(b) The aggregate total of credits, or participations in credits, extended pursuant to this Act (excluding credits covered by guaranties issued pursuant to section 24(b)) and of the face amount of guaranties issued pursuant to sections 24 (a) and (b) during the fiscal year ~~[1969]~~ *shall not exceed \$296,000,000]* *shall not exceed \$300,000,000 for each of the fiscal years 1970 and 1971.*

* * * * *

SEC. 33. REGIONAL CEILINGS ON FOREIGN MILITARY SALES.—(a) The aggregate of the total amount of military assistance pursuant to the Foreign Assistance Act of 1961, as amended, of cash sales pursuant to sections 21 and 22, of credits, or participations in credits, financed pursuant to section 23 (excluding credits covered by guaranties issued pursuant to section 24(b)), of the face amount of contracts of guaranty

issued pursuant to sections 24 (a) and (b), and of loans and sales in accordance with section 7307 of title 10, United States Code, shall, excluding training, not exceed \$75,000,000 in [the fiscal year 1969] each fiscal year for Latin American countries.

(b) The aggregate of the total amount of military assistance pursuant to the Foreign Assistance Act of 1961, as amended, of cash sales pursuant to sections 21 and 22, of credits, or participations in credits, financed pursuant to section 23 (excluding credits covered by guaranties issued pursuant to section 24(b)), and of the face amount of contracts of guaranty issued pursuant to sections 24 (a) and (b) shall, excluding training, not exceed \$40,000,000 in [the fiscal year 1969] each fiscal year for African countries.

(c) The President may waive the limitations of this section when he determines it to be important to the security of the United States, and promptly so reports to the Speaker of the House of Representatives and the Committee on Foreign Relations of the Senate.

* * * * *

SEC. 47. Prohibition of assistance to Cambodia.—In order to avoid the involvement of the United States in a wider war in Indochina and to expedite the withdrawal of American forces from Vietnam, it is hereby provided that, unless specifically authorized by law hereafter enacted, no funds authorized or appropriated pursuant to this Act or any other law may be expended for the purpose of—

- (1) retaining United States forces in Cambodia;*
- (2) paying the compensation or allowances of, or otherwise supporting, directly or indirectly, any United States personnel in Cambodia who furnish military instruction to Cambodian forces or engage in any combat activity in support of Cambodian forces;*
- (3) entering into or carrying out any contract or agreement to provide military instruction in Cambodia or to provide persons to engage in any combat activity in support of Cambodian forces; or*
- (4) conducting any combat activity in the air above Cambodia in support of Cambodian forces.*

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